

# Legislative environment

**EGBA strives for a non-discriminatory regulatory framework that allows European consumers to have choice when accessing safe and secure EU-licensed and regulated online gaming services.**

## EU legislation for online gaming?

Like any other internet service, online gaming is by definition a cross-border activity that does not stop at the territorial boundaries of individual Member States. For this reason, and even if there is no EU secondary law yet that harmonises gambling as such, gambling is already covered by horizontal EU legislation such as consumer protection rules (Unfair Commercial Practices Directive), and the 4<sup>th</sup> Anti- Money Laundering Directive.

European consumers would strongly benefit from an identical level of protection regardless of their place of residence in the EU. They would also benefit from a more attractive offer in the regulated markets, as operators could make their offers much more attractive if they don't need to carry the costs of duplications of requirements and regulation in the current hyper fragmented EU market.

## Up to the Member States?

Yes, but to a certain extent. In the absence of EU legislation, the Member States can have their own legislation to regulate their market and protect their consumers. However, as gaming is an economic activity, again, the legislation of Member States needs to comply with the basic rules and freedoms provided by the European Treaties. The Court of Justice of the European Union (CJEU) has developed a very large body of jurisprudence on how those freedoms should be applied by Member States to the (online) gambling sector.

In particular, any restriction to the freedom to provide cross-border services recognized by the European Treaties must be strictly justified and meet clear conditions. Moreover, national measures must not discriminate against operators that are licensed and regulated in other Member States or be misused for other purposes such as the protection of traditional monopolies or the assurance of the tax income of the state, as has been established by the CJEU. Further, the provisions of the European Convention on Human Rights also apply to the gambling sector, for example, when it comes to freedom of expression. This means that when drafting legislation, Member States need to be aware that they are part of the Internal Market and that measures restricting it must be properly motivated and supported by objective evidence and data.

It is also useful to note that the compliance of national legislation with the EU Treaties is ensured by the European Commission which, in its role of guardian of the EU Treaties, can initiate infringement proceedings against incompliant Member States, and eventually refer Court of Justice of the European Union.